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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DUMONT M. JONES and VADIM M. KOGANOV

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Appeal 2009-004118  
Application 10/706,352<sup>1</sup>  
Technology Center 2100

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Decided: December 11, 2009

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*Before JEAN R. HOMERE, ST. JOHN COURTENAY III, and  
JAMES R. HUGHES, Administrative Patent Judges.*

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL

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<sup>1</sup> Application filed Nov. 12, 2003. Appellants claim the benefit under 35 U.S.C. § 119 of provisional application 60/425,854, filed Nov. 12, 2002. The real party in interest is Proximate Technologies, LLC. (App. Br. 3.)

## STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) (2006) from the Examiner's rejection of claims 1-24. Claims 6, 23, and 24 have been indicated as allowable by the Examiner. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We reverse.

### *Appellants' Invention*

Appellants invented a method for searching and evaluating the text content of a database utilizing a distance function in combination with the graphical display of multi-node nets. (Spec. 2, ll.15-20.)<sup>2</sup>

### *Claim*

Independent claim 1 further illustrates the invention. It reads as follows:

1. A method for evaluating the text content of a document database with respect to a document population, comprising the steps of:
  - (a) providing a computer system having a user interface with a display;
  - (b) gathering documents from said database into said system;
  - (c) normalizing said gathered documents;
  - (d) fingerprinting said gathered documents;

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<sup>2</sup> We refer to Appellants' Specification ("Spec.") and Appeal Brief ("App. Br.") filed October 4, 2007. We also refer to the Examiner's Answer ("Ans.") mailed January 23, 2008.

- (e) determining a text criteria with respect to said document population;
- (f) forming a net comprising at least two nodes associated by at least one interaction and displayable at said display as two or more spaced apart nodes connected by an interaction;
- (g) loading said text criteria into at least one of said nodes;
- (h) for each document of said database, calculating its geometric relative distance from a said node to derive one or more node attractors;
- (i) displaying said net at said display in combination with one or more document symbols each representing a said document located in correspondence with said calculated relative distance;
- (j) visually examining the display of said net and document symbols; and
- (k) determining from said document symbol locations at said display those documents, if any, which are more likely to correspond with said text criteria.

### *References*

The Examiner relies on the following references as evidence of unpatentability:

Crooks	US 2004/0078366 A1	Apr. 22, 2004
Gallivan	US 6,778,995 B1	Aug. 17, 2004
Nevin	US 2005/0086238 A1	Apr. 21, 2005
Bluhm	US 7,085,755 B2	Aug. 1, 2006

*Rejections*

The Examiner rejects claims 1-12 under 35 U.S.C. § 103(a) as obvious in view of Gallivan, Bluhm, and Nevin.

The Examiner rejects claims 13-21 under 35 U.S.C. § 103(a) as obvious in view of Bluhm and Nevin.

The Examiner rejects claims 22-24 under 35 U.S.C. § 103(a) as obvious in view of Crooks and Nevin.

*Appellants' Contention*

Appellants contend that the claimed subject matter is not rendered obvious by the Gallivan, Bluhm, and Nevin references because the references do not teach calculating, for each document in a database, a geometric relative distance from a node to derive one or more node attractors. (App. Br. 16-18.)

*Examiner's Findings and Conclusions*

The Examiner finds that the prior art teaches each feature of Appellants' claims (Ans. 4-17), and maintains that each of the claims is properly rejected (Ans. 18-56, *see* "Response to Argument" section).

**ISSUE**

Based on Appellants' contention, as well as the findings and conclusions of the Examiner, the issue before us for review is as follows.

Did Appellants establish that the Examiner erred in finding the Gallivan, Bluhm, and Nevin references teach calculating, for each document

in a database, a geometric relative distance from a node to derive one or more node attractors?

## FINDINGS OF FACT (FF)

### *Appellants' Invention*

1. Appellants' Specification explains that the "force" between a node and a document is used to calculate the "geometric distance" from the document to the node, and describes the interrelation of the terms:

The terms "potential", "field", "force", or "attractor" as used herein are intended to encompass any system element that applies a force to a document. The force in turn is used to calculate geometric distance from net nodes to documents. A "force" has the conventional interpretation that an object subjected to a force will obey a classical equation of motion (i.e.  $F = ma$ ).

(Spec. 7, ll. 3-7.)

2. Appellants' Specification also explains that "a geometric relative distance for each document within the document population will be calculated from the node potentials and displayed at the computer display as document symbols." (Spec. 13, ll. 7-9.)

### *Nevin Reference*

3. Nevin describes a system and method for storing data in nodes and visualizing the data as linked nodes. The data may include text, concepts, and documents. (p. 2, ¶[0018].)

4. Nevin describes that the nodes are linked and the links include information including the connection strength of the link. (p. 2, ¶[0031]; p. 4, ¶[0084]; p. 9, ¶[0185].)

## PRINCIPLES OF LAW

### *Burden on Appeal*

Appellants have the burden on appeal to the Board of the Patent Appeals and Interferences (Board), to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

### *Obviousness*

A claimed invention is not patentable if the subject matter of the claimed invention would have been obvious to a person having ordinary skill in the art. 35 U.S.C. § 103(a); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13 (1966). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art. *Graham*, 383 U.S. at 17. *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasizes “the need for caution in granting a patent based on the combination of elements found in the prior art,” and stated that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 415-16. The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

*Id.* at 417. The operative question is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

## ANALYSIS

Nevin describes a system and method for storing data, which may include documents, into nodes and displaying the data as linked nodes. Each of the linked nodes includes information concerning the connection strength of the link. (FF 3 & 4.)

Appellants, however, contend that the combination of the Gallivan, Bluhm, and Nevin references, and Nevin in particular, do not teach calculating, for each document in a database, a geometric relative distance from a node to derive one or more node attractors. (App. Br. 16-18.) The Examiner maintains that “[d]ata is stored into nodes which are linked together. All nodes contain variables, including descriptions, types, magnitudes and timestamps,” and “can contain concepts or documents.” “Links also contain information about themselves, including connection strength of the link and descriptive information . . . .” (Ans. 28.) Thus, Nevin describes documents in nodes and calculates “distance from a

document node to a concept node.” (*Id.*) Accordingly, we decide the question of whether Appellants have shown error in the Examiner’s finding that Nevin teaches calculating a geometric relative distance from a node and an attractor for each document in a database, as recited in claim 1, step h.

We determine the scope of the claims in patent applications not solely based on the claim language, but upon giving claims “their broadest reasonable interpretation consistent with the [S]pecification” and “in light of the [S]pecification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). Appellants do not explicitly define the terminology “geometric distance” or “attractor,” but do explain using an “attractor” to calculate the “geometric distance” from a document to a node. (FF 1 & 2.) Appellants do not provide any additional clarification as to the meaning of the contested limitation. (See App. Br. 9, citing Spec. 20, ll.1-4.) Thus, we interpret an attractor to mean the strength (force) of attraction between the document and node, i.e., the similarity between the document and the criteria of the node. Accordingly, we broadly but reasonable interpret this limitation to mean calculating the strength of similarity of a document in a node to the criteria of the node and representing the strength by the geometric relative distance from node to the document for each document in the database.

After reviewing the record on appeal, we find Nevin describes calculating the strength of attraction between nodes, i.e., their connection strength or similarity, as well as representing the strength as the distance between nodes. Nevin is silent, however, as to the documents within the nodes. Although Nevin describes loading documents into nodes, it does not

describe calculating the strength of attraction and representing the strength as a distance for each document in the database as recited in claim 1.

If we analogize claim construction to a painting, then the Examiner uses too broad a brush, construing the disputed limitation too broadly, and glossing over its details. Claim 1, step h recites “for each document of said database, calculating its geometric relative distance from a said node to derive one or more node attractors.” Thus, the claim requires calculating the geometric relative distance from a node, as well as an attractor for each document. The Examiner’s finding that Nevin calculates “distance from a document node to a concept node” (Ans. 28) does not meet this limitation. Thus, we agree with Appellants that the combination of Gallivan, Bluhm, and Nevin references does not teach calculating a geometric relative distance from a node and an attractor for each document in a database – a limitation recited in independent claim 1, and common to the other independent claims on appeal (claims 13 and 22).

For the foregoing reasons, Appellants have persuaded us of error in the Examiner’s obviousness rejections of claims 1-24. Accordingly, we will not sustain the Examiner’s rejection of the claims.

#### CONCLUSION OF LAW

On the record before us, we find that Appellants have established that the Examiner erred in finding the Gallivan, Bluhm, and Nevin references teach calculating, for each document in a database, a geometric relative distance from a node to derive one or more node attractors.

Appeal 2009-004118  
Application 10/706,352

**DECISION**

We reverse the Examiner's rejection of claims 1-24 under 35 U.S.C. § 103(a).

**REVERSED**

llw

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